IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

CHAMBER SUMMONS NO.480 OF 2003
IN
SUIT NO.4913 OF 2000

Majid A. Ahmedbhai Oomerbhoy Plaintiff

versus

Sattar Ahmedbhai Oomerbhoy & ors. Defendants

and

M/s.Kalyanji Ghelabhai & anr. Applicants

Mr.Zariwala with Ms.Agnes Baradia i/by Thakore Jariwalla & Associates for plaintiff.

Mr.Sanjay Jain i/by S.K.Srivastava & Co. for defendants.

Ms.Indira Murudkar with Mr.P.V.Nichani for applicants.

Mr.Rane - representative of Court Receiver.

CORAM : S.C.DHARMADHIKARI, J.

DATE : 29th June 2006

PC :

1. Heard Shri Nichani appearing for the applicants, Shri Jain appearing for defendant no.1 and Ms.Agnes Baradia for plaintiff.

2. The applicants by this Chamber Summons have

prayed that they should be added as parties to the suit and this Court's Order passed in Notice of Motion No.3419 of 2000 including orders dated 31st July 2001 and 9th October 2002 be set aside and/or modified to the extent of the shop premises referred to in prayer clause (b) of the Chamber Summons. It appears that this Court had passed an order of status-quo on 5th April 2003 on this Chamber Summons. Thereafter, it has been placed before me from time to time.

3. I was informed that Supreme Court proceedings are over. Therefore, I directed that this Chamber Summons be listed for hearing and final disposal.

4. Shri Nichani appearing for applicants in support of this Chamber Summons submits that the applicants are partnership firm. They were carrying on business as Brokers in Oils and Oil Seeds. They were brokers for the plaintiffs and defendants. In paragraph 2 of the company application, according to Shri Nichani, it is categorically pointed out that the firm M/s.Ahmed Oomerbhoy were the tenants of Keshavji Jadhavji Trust (landlords) in respect of subject premises. The tenants were carrying on business of purchase

of edible oils and oil seeds from the premises.

5. Since the applicants were official brokers, in or around 1961, the applicants were inducted in a portion of the premises on leave and licence basis up to the year 1966. The tenants thereafter shifted their operations from these premises. The applicants were in exclusive use, occupation and possession of these premises.

6. It is contended by Shri Nichani that although in paragraph 3 of the affidavit in support as also in the leave and licence agreement there is a reference only to the "table space" it was always understood by parties that premises as a whole would be used, occupied and would be in possession of the applicants. He submits that from the tenor of the agreement it is apparent that possession was handed over exclusively and, therefore, all liabilities namely payment of electricity bills, telephone bills and expenses were borne by the applicants. The keys also were in possession of the applicants.

7. He submits that the applicants have produced electricity bills, correspondence, telephone bills and other records. He submits that in

respect of the portion which is covered by the agreement at Exhibit-A and the licence being subsisting as on 1st February 1973, the applicants have become tenants in the shop premises.

8. In these circumstances, the averment in the plaint that suit premises consist of this shop and that would be an asset of the partnership firm, is incorrect and appointment of Court Receiver to that extent so also the power to take physical possession, cannot be justified. For all these reasons, he submits that applicants be made parties and the orders passed by this Court be set aside and/or modified accordingly.

9. The first defendant has filed an affidavit and has pointed out that the applicants are third parties purportedly claiming tenancy rights in respect of one of the properties. They have independent remedies in law available for them to ascertain their rights. In fact, proceedings have been initiated in the Court of Small Causes at Mumbai and the same are pending. That apart, he submits that the orders cannot be modified at their instance because not only the documents but the entire record shows that all that the

applicants were allowed to use is table space. The compensation was collected only for the table space. There is no question of any right being conferred in respect of premises when all that was granted was facility to utilise table space. My attention is invited by Shri Jain to the affidavit in reply where all allegations in the affidavit in support are denied. It is also contended by Shri Jain and Shri Zariwala that applicants are not in exclusive use, occupation and possession of the shop premises. They submit that all that the documents would go to show is payment of some amount towards use and occupation of the table space and nothing else. He submits that such a facility does not create any right/title in the premises and there is no question of the applicants becoming tenants.

10. Shri Jain has pointed out that when the Court Receiver took formal possession of the premises way back in the year 2001, there is no objection to the said Act of the Court Receiver. Even now, the applicants would not be dispossessed but would continue to occupy the said table space, if they are in occupation, as agents of Court Receiver. He submits that a declaratory suit has been filed only after the

orders passed by this Court and as a counter blast. Therefore, the Chamber Summons be dismissed.

11. This Court in the present suit which is filed for dissolution of the partnership firm and accounts, has, by consent, appointed Court Receiver, High Court, Bombay to be the Receiver of assets of the firm. The list of assets and properties was also placed before this Court and the subject premises have been included therein. This Court has noted submissions of both sides that the licence for table space, has been granted in this premises in favour of applicants and this Court, therefore, directed the Court Receiver to take possession of the premises and appointed applicants as agents only for the table space. It appears that a letter was addressed by the applicants on 4th December 2001 to the Court Receiver wherein it is contended that they are tenants of the subject shop premises. They purported to sent rent with regard to the use and occupation of the premises. The Court Receiver has communicated on 31st January 2002 to the applicants that upon valuation being made they will have to pay the suggested royalty of Rs.19,500/- per month but he had given them

opportunity to make their submissions before the royalty was determined by him.

12. Thereafter, the Court Receiver received a letter from the applicants advocate dated 21st February 2002.

13. It is clear from this letter that an undertaking was executed on 21st September 2001 and there is a reference to the said undertaking in this advocate’s letter. Applicants advocate entered into further correspondence. There is a further letter of 29th March 2003 to the advocate of applicants whereby the Court Receiver informed him that a partition will be put up for separating the table space.

14. From a perusal of the agreement which is heavily relied upon, it is clear that prima facie the firm is a monthly tenant of a shop on the ground floor. The shop is used as purchase office for oil and oil seeds. The applicants services were engaged as brokers. All these facts are not disputed by the applicants as also Shri Nichani appearing for them. However, he would submit that even if the licence agreement which has been executed as early as on 1st April

1966 making reference only to a table space, it is in fact an agreement of sub tenancy and covers entire premises.

15. A perusal of the agreement and clauses 1 and 2 would demonstrate that there is no reference to the premises. There is only reference to the use and occupation of the table space outside the cabin in the shop for the purpose of carrying on business as brokers of Oil and Oil Seeds. It is clear that the agreement has a schedule which also does not make any reference to the premises but only to the articles. Clauses 6 to 9 make it abundantly clear that the applicants have no right of any nature whatsoever in the premises. Therefore, prima facie, it is difficult to accept the contention of Shri Nichani that a sub tenancy is created in favour of applicants in respect of subject shop premises. In fact, the applicants' case that it has right in the premises as Licensees is also difficult to accept. Prima facie, "Licence" postulates occupation of "Premises". A table space is not "Premises". There is nothing to indicate that any right is created in favour of the applicants in the area beneath the same.

16. When the foundation of the entire case is this leave and licence agreement, which is executed as far back as in 1966, then it is not possible to accept the case that any right has been created in favour of applicants and reliance upon electricity bills, telephone bills and other documents, is totally misplaced.

17. In my view, once the nature of right granted under the agreement is a table space, then, prima facie, it is not possible to accept the case of applicants that they have any right in the premises. They have failed to point out any other document/s which would demonstrate that such a right has been created.

18. Shri Nichani was at pains in pointing out that although no interim relief has been granted in the pending Small Causes suit, it will not be permissible for this Court to record any finding with regard to right of the applicants when suit is pending.

19. In my view, this is an application of the applicants for setting aside orders passed by this Court. Applicants submit that the Court Receiver cannot dispossess them from the

premises. It is they who have approached this Court for being impleaded as party defendants and for setting aside the orders of this Court. It is this application which is being considered. Therefore, I have been careful enough and I have said that all observations made are prima facie and would not, therefore, prejudice rights and contentions of the applicants in the pending suit.

20. However, considering the clauses in the agreement and other documents brought to my notice, it is not possible to hold that the applicants have any right in the premises so as to direct the plaintiffs to implead them as defendants and to set aside the order of this Court.

21. Accordingly Chamber Summons is dismissed. Ad-interim order to stand vacated. At the request of Ms.Indira Murudkar holding for Shri Nichani, order of status-quo is continued for a period of eight weeks. In the light of the detailed arguments which I have heard on this Chamber Summons on behalf of applicants as also plaintiffs and defendant no.1 and the representative of Court Receiver being present

when the matter was argued, separate orders on Chamber Summons No.564 of 2003 are not necessary and it is accordingly disposed of.

(S.C.DHARMADHIKARI, J.)